IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5034 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VASANT PUBLIC EDUCATION TRUST - Petitioner(s)
Versus
REGIONAL PROVIDENT FUND COMMISSIONER & 1 - Respondent(s)

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Appearance :
MR JAYRAJ CHAUHAN FOR MR MUKUND M DESAI for Petitioner(s) : 1,
MR PJ MEHTA for Respondent(s) : 1,
DELETED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

Date : 04/08/2006
ORAL JUDGMENT

This petition under Article 226 of the Constitution is filed by a trust running educational institutions for challenging the order dated 19.3.1998 passed by the Employees' Provident Fund

Appellate Tribunal confirming the order dated 12.3.1997 of the Regional Provident Fund Commissioner, Ahmedabad.

2. The authorities under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as “the Act”) have held that the employees employed by the petitioner trust for running its primary, secondary and higher secondary schools are covered by the provisions of the Act.

3. The grievance of the petitioner trust is that the petitioner is running a Gujarati medium primary school in Nava Wadaj area in Ahmedabad and it is running a different school altogether in a different locality being a high school opposite Subhash Bridge in Ahmedabad. The high school is imparting instructions to students from Std. VIII to XII in English medium or in Gujarati medium. Mr Jayraj Chauhan for Mr Mukund Desai, learned counsel for the petitioner trust has submitted that the authorities cannot invoke the provisions of Section 2A of the Act unless the following tests are satisfied :-

(i) unity of ownership, management and control,
(ii) functional integrality, and
(iii) unity of employment.

It is submitted that mere unity of ownership is not sufficient to invoke Section 2A of the Act.

In the instant case, the primary school has one Principal whereas the secondary school and the higher secondary schools have another Principal. The teachers in the secondary school and higher secondary school are covered by the direct payment scheme and their salaries are being paid directly by the Government. On the other hand, the teachers in the primary school are not covered by any such scheme and the school is also not receiving any grant for payment of salaries to the teaching and non-teaching staff of the primary school. Both the schools are being run in the premises which are in two different localities. The teachers in the primary school cannot be transferred to secondary school or higher secondary school and vice versa and, therefore, the test of unity of employment is also not satisfied.

As regards the functional integrality also, it is submitted that the primary school is being run as per the provisions of the Bombay Primary Education Act and the regulations framed thereunder whereas the secondary and higher secondary school is being run under different statutory provisions called the Gujarat Secondary and Higher Secondary Education Act and the regulations framed thereunder. It is submitted that the secondary and higher secondary school from Std. VIII to XII can continue even if the primary school is closed down. Similarly, the primary school can continue even if the secondary and higher secondary schools are closed down.

It is further submitted that the authorities have erred in relying upon the decision of this Court in Akhandanand Kelawani Utejak Mandal vs. Regional Provident Fund Commissioner, 1997(3) GLR 2322 because it was a case where both the secondary school and the primary school were run in the same premises with the same furniture and facilities.

4. On the other hand, Mr PJ Mehta, learned standing counsel for the respondent-department has opposed the petition and submitted that it is not necessary that all the three tests have to be satisfied before the department can invoke the provisions of Section 2A of the Act. It is submitted that both the schools are admittedly owned by the same trustees and that both the schools have thus unity of ownership, management and control.

As regards functional integrality also, it is submitted that the students passing out from Std. VII in the primary school run by the petitioner trust are being absorbed as students in Std. VIII of the secondary school being run by the petitioner trust and, therefore also, they are inter-connected.

5. Section 1(3)(b) provides that subject to the provisions of Section 16, the Act applies to any establishment employing 20 or more persons or class of establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf. As per the notification dated 19.2.1982

issued by the Government of India, the following category of establishments in each of which 20 or more persons are employed, are to be treated as one establishment :-

> “(iii) any school, whether or not recognized or aided by the Central or a State Government.”

Section 2(e) defines “employer” as the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager .. .. such manager ....

Section 2A reads as under :-

> “2A. Establishment to include all departments and branches.- For the removal of doubts, it is hereby declared that where an establishment consists of different departments or has branches, whether situate in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment.”

Section 16 provides that the Act shall not apply to certain establishments. However, it is not the petitioner's case that they fall under any of the provisions of Section 16 of the Act.

6. The learned counsel for the parties have referred to various decisions including (i) Associated Cement Companies Ltd. vs. Their Workmen,

AIR 1960 SC 56, (ii) Chairman Sarvajanik Education Society, Surat vs. Jashvantrai Gulabrai Desai, 1978 GLR 1058, (iii) Akhandanand Kelawani Utejak Mandal vs. Regional Provident Fund Commissioner, 1997(3) GLR 2322, (iv) Ebrahim Currim & Sons vs. Regional Provident Fund Commissioner, 1993 Lab.IC 1740 and (v) V. Venkatesh vs. Union of India, 1982 LLJ 162.

7. In view of the order that this Court propose to pass, it is not necessary to deal with or discuss all the decisions cited at the Bar. Suffice it to state that, as laid down by this Court in Akhandanand Kelawani Utejak Mandal case, 1997(3) GLR 2322, when the two establishments are ostensibly different, following three tests are laid down to determine whether such establishments should be considered as one establishment for the purposes of the Employees' Provident Fund Act :-

(i) unity of ownership, management and control,
(ii) functional integrality, and
(iii) unity of employment.

8. As far as the test of unity of ownership, management and control is concerned, there is no dispute about the fact that both the schools are owned by the same petitioner trust. However, as far as the issue of management and control of the schools is concerned concerned, according to the petitioner trust, since the two schools are headed by two different Principals, it cannot be said that there is

unity of management and control. The contention cannot be fully accepted merely because the two Principals are different. The power or right of management is not all vested in the Principal of the primary school or the Principal of the secondary school. The trust does manage both the institutions by appointing teachers, by having disciplinary control over them and also by assigning work to the different teachers. It may be that time tables may be arranged by the respective Principals, but the management and control of an education institution is a much wider concept than merely arranging time tables for the teachers and the periods. Hence, the test of unity of ownership is fully satisfied and the test of management and control can be said to be substantially satisfied.

9. As far as the test of unity of employment is concerned, since the teachers of one school are not transferable to the other school, one being primary school and the other being secondary/higher secondary school, obviously the test of unity of employment cannot be said to be satisfied. However, as held by this Court in the case of Akhandanand Kelawani Utejak Mandal, it is not necessary that all the three tests have to be satisfied. Even if two tests are satisfied, the authorities may be in a position to invoke the provisions of Section 2A of the Act. The test of functional integrality is considered to be an important test and it has been held that that test is satisfied if the two establishments are so

interconnected with each other that one cannot reasonably exist without the other. That is to say, if the closure of one school would not lead to the closure of the other school, it cannot be said that the functional integrality test would be satisfied.

10. The learned counsel for the petitioner trust has submitted that the primary school can exist without the secondary school and the secondary school can exist without the primary school. On the other hand, Mr Mehta for the authorities submits that students passing out from the 7th Std. in the primary school are being admitted to the 8th Std. in the secondary school of the petitioner trust and, therefore, both the schools are functionally independent.

11. Having heard the learned counsel for the parties, it appears to the Court that no final opinion can be expressed on the basis of the material before the authorities and before the Court at this stage. It appears that the primary school is a Gujarati medium school, but the secondary school has both English medium classes and Gujarati medium classes. It would be a question of fact whether the students in Gujarati medium classes in the secondary school run by the petitioner trust are those who had taken their primary education in the primary school of the petitioner trust. Similarly, it would be a question of fact whether the students in English medium are in majority as compared to the students in

Gujarati medium in the secondary school. All these questions of fact would be required to be examined by the authorities before giving any finding on the question of functional integrality.

12. In view of the above discussion, the impugned orders are set aside. The matter is remanded to the Regional Provident Fund Commissioner to permit the parties to lead evidence on all the issues and to decide the matter afresh in accordance with law after giving them an opportunity of being heard.

13. The petition is accordingly partly allowed to the aforesaid extent only.

It is clarified that the Regional Provident Fund Commissioner shall decide the matter on merits and in accordance with law without being influenced by the decisions rendered earlier by the Regional Provident Fund Commissioner or the Appellate Tribunal.

Rule is made absolute to the aforesaid extent only.

[M.S. SHAH, J.]

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